



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,093	03/26/2002	Wolfgang Lindner	B&B-106	4761
28970	7590	03/15/2004	EXAMINER	
SHAW PITTMAN IP GROUP 1650 TYSONS BOULEVARD SUITE 1300 MCLEAN, VA 22102			NILAND, PATRICK DENNIS	
			ART UNIT	PAPER NUMBER
			1714	
DATE MAILED: 03/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/018,093	Applicant(s) LINDNER, WOLFGANG	
	Examiner Patrick D. Niland	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-43 and 50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-43, and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5-6, 8-12, 15, 23-24, 28, 30-43, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 3119801 Haskell.

Haskell discloses the instantly claimed method of separating a mixing of polymers at column 1, lines 10-57 and the remainder of the document. Agitation falls within the scope of shearing. There is no evidence that the products of the patentee do not fall within the scope of the instant claims 42-43 because there is not enough information about the final product to determine if it is excluded from the instant claims. The method limitations regarding these product claims are not sufficient to determine whether the product of the claimed prior art could have also been made by the instantly claimed method using some starting product. Applicant's argument that the instant claims require "solution" is not persuasive because line 5 of claim 1 recites "solution". The argument that Haskell does not relate to "polyolefin materials" is not persuasive because column 1, lines 21-24 recites "a mixture of compounds" which falls within the scope of the instantly claimed "mixture of polyolefin plastic materials" within the scope of

Art Unit: 1714

what is recited in the instant claims. Claim 1 only requires "at least one polymer type". "Polymer type" is not defined. Therefore the "mixture" of the patentee is deemed to have one or more "polymer types", i.e. the polymer portions separated according to molecular weight (column 1, lines 29-32) are each of a different polyolefin type. Claim one does not require mixtures of the argued polyolefins. No evidence is seen that the temperature adjustments of Haskell, column 1, lines 49-57 do not necessarily and inherently give the instantly claimed "at least two liquid phases...each of which contains at least one polymer type in a concentration higher than in other liquid phases". Since the "mixture" of polyolefins of the patentee is separated, this limitation is necessarily expected in the method of the patentee.

4. Claims 1-3, 5-43, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5198471 Nauman et al. in combination with US Pat. No. 3119801 Haskell.

Nauman discloses the instantly claimed means of separating the instantly claimed polymer mixtures but does not disclose the instantly claimed shearing step. See the entire document. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to shear the solutions of Nauman because Nauman states that "conventional techniques for extracting a polymer from a solvent can be used" in the abstract and Haskell shows the use of shear to be a conventional technique for precipitating polymer from a solution and the ordinary skilled artisan would have expected the benefits of using shear to precipitate the polymer of Haskell in the final product of Nauman.

The applicant's argument that Nauman fails to cure deficiencies in Haskell ignores the fact that Haskell is used to modify Nauman, not as argued by the applicant. It is acknowledged that Nauman does not precipitate using shear. The precipitation method is taught by Haskell and encompassed by Nauman as clearly stated above. No evidence is seen that the temperature adjustments of Nauman (abstract) do not necessarily and inherently give the instantly claimed "at least two liquid phases...each of which contains at least one polymer type in a concentration higher than in other liquid phases".

There is no evidence that the products of the patentee do not fall within the scope of the instant claims 42-43 because there is not enough information about the final product to determine if it is excluded from the instant claims. The method limitations regarding these product claims are not sufficient to determine whether the product of the claimed prior art could have also been made by the instantly claimed method using some starting product.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1714

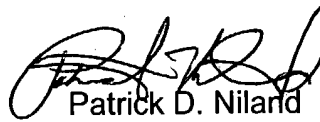
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Niland whose telephone number is (571) 272-1121. The examiner can normally be reached on Monday through Thursday from 10 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

pn


Patrick D. Niland
Primary Examiner
Art Unit 1714